

February 2, 2023

**VIA EMAIL AND ECF**

The Honorable Richard G. Andrews  
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Re: *In re Boy Scouts of America and Delaware BSA, LLC*, No. 22-cv-01237-RGA

Dear Judge Andrews:

We write in response to the Certain Insurers' letter regarding *In re LTL Management LLC*, No. 22-2003 (3d Cir. Jan. 30, 2023) [D.I. 130].

*LTL* is irrelevant to the issues currently before the Court. *LTL* addressed a motion to dismiss, and held that a company that is not in financial distress does not have a good faith purpose for filing a bankruptcy petition. Op. at 35–54. Here, there is no dispute that the BSA was in financial distress and had a good faith purpose for filing the cases. No one has filed an appeal challenging the BSA's good faith in filing the cases or its financial distress.

Further, the Certain Insurers' assertion that a finding of good faith is a legal issue is incorrect. The Third Circuit held that the findings of fact underlying the issue of good faith are subject to review for clear error. Op. at 33. The legal issue is only the ultimate conclusion drawn from those factual findings. The Certain Insurers do not argue for a different conclusion based on the underlying factual findings as determined by the bankruptcy court, nor could there be one. The Certain Insurers argue for different underlying factual findings to support a different conclusion, asserting that the bankruptcy court should have found that the BSA colluded with survivors (D.I. 45 at 45–51), inflated claim values (*id.* at 25–31), abrogated insurance rights (*id.* at 32–34), bound insurers to pay awards (*id.* at 37), and eliminated insurer coverage defenses (*id.*). Those findings are subject to a clear error standard of review. The Certain Insurers do not cite a single finding of fact that would support a legal (or factual) conclusion of bad faith.

Very truly yours,

/s/ Glenn M. Kurtz

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/s/ Derek C. Abbott

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